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Letter dated 27 August 2002 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

Upon instructions from my Government and further to my letter dated 23 May 2002 (A/56/962-S/2002/577), I have the honour to draw Your Excellency's attention to new massive violations of the flight information region (FIR) of Nicosia and the national airspace of the Republic of Cyprus by military aircraft of the Turkish air force, recorded on 2, 3, 5, 8, 10, 13, 15, 17, 20, 21, 24, 26, 27 and 28 May, 5, 10, 11, 17, 20, 24, 26 and 28 June, 2, 5, 7, 15, 16, 17, 18, 19, 20, 21, 22 and 23 July 2002.

On 2 May, one CN-235 and one aircraft of unknown type, after taking off from the airport of Krini in the occupied territory of the Republic, entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying in a search and rescue mission north of Cyprus before exiting towards the FIR of Ankara and landing at the aforementioned airport respectively.

On 3 May, one CN-235 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 5 May, one Turkish military aircraft of unknown type entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 8 May, three military aircraft (unknown type) of the Turkish navy took off from a location within the limits of the Nicosia FIR and, flying within those limits, violated international air traffic regulations before landing at the same location.

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On 10 May, six F-16 and two RF-4 Turkish military aircraft, flying in three formations and coming from a western direction and the FIR of Ankara, entered the Nicosia FIR, violating international air traffic regulations, before exiting towards the FIR of Ankara and in a westerly direction respectively.

On 13 May, two F-4 and two RF-4 Turkish military aircraft, flying in one formation and coming from the FIR of Ankara, entered the Nicosia FIR, violating international traffic regulations, before exiting towards the FIR of Ankara.

On 15 May, one C-160 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Karpasia (Cape of Apostolos Andreas) before exiting in a south-easterly direction, from where it returned later on the same day.

On 17 May, two F-4 Turkish military aircraft, flying in one formation and coming from the FIR of Ankara, entered the Nicosia FIR, violating international air traffic regulations, before exiting in a westerly direction.

On 20 May, two F-16 Turkish military aircraft coming from the FIR of Ankara entered the Nicosia FIR, violating international air traffic regulations, before exiting towards the FIR of Ankara.

On 21 May, one C-650 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 24 and 26 May, two B-200 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 27 May, one B-200 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 28 May, two F-16, two RF-4 and two F-4 Turkish military aircraft, flying in two formations and coming from the FIR of Ankara, entered the Nicosia FIR, violating international air traffic regulations, before exiting in a westerly direction.

On the same day, eight F-4 Turkish military aircraft flying in two formations and coming from the FIR of Ankara entered the Nicosia FIR, violating international air traffic regulations, before exiting in a westerly direction.

On 5 June, one AS-532 (Cougar) Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing first at the illegal airport of Tymbou and the illegal airport of Krini, both in the occupied area of the Republic. The aircraft took off on the next day, 6 June, and flying towards the FIR of Ankara violated the national airspace of the Republic.

On 10 June, one C-160 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Karpasia (Cape of Apostolos Andreas) before exiting in a south-easterly direction. The aircraft returned on the same day from the same direction.

On 11 June, one B-200 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 17 June, one B-200 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 20 June, one F-4 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Karpasia (Cape of Apostolos Andreas) before returning on the same day to the FIR of Ankara.

On 24 June, one CN-235 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 26 June, two F-4 and two RF-4 Turkish military aircraft flying in one formation entered the north-western part of the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Karpasia (Cape of Apostolos Andreas) and very close to the coast (14 nautical miles) before returning on the same day to the FIR of Ankara.

On 28 June, one F-4 and one CN-235 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, as follows:

(a) The CN-235 entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara;

(b) The F-4, coming from a south-easterly direction, violated the national airspace of the Republic of Cyprus flying over the area of Karpasia (Cape of Apostolos Andreas) before returning on the same day to the FIR of Ankara.

On 2 July, one CN-235 and one C-160 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 5 July, one CN-235 and one C-160 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 7 July, one B-200 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 15 July, one B-200 and one C-160 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, as follows:

(a) The B-200 entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara;

(b) The C-160, coming from a south-easterly direction, violated the national airspace of the Republic of Cyprus flying over the area of Karpasia (Cape of Apostolos Andreas) before exiting in a south-easterly direction. The aircraft returned on the same day from the same direction.

On 16 July, two F-16 Turkish military aircraft flying in one formation entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying and reaching the cape of Kormakitis before exiting towards the FIR of Ankara. The aircraft returned later on the same day and, flying again close to the cape of Kormakitis, returned to the FIR of Ankara.

On 17 July, three F-16 and three F-4 Turkish military aircraft flying in two formations entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the areas of Mesaoria and Kyrenia, before returning on the same day to the FIR of Ankara.

On 18 July, two C-130 and one C-160 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Lefkoniko and the illegal airport of Tymbou respectively, both in the occupied area of the Republic. The aircraft returned to the Ankara FIR on the same day.

On 19 July, one C-650 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned on the same day to the FIR of Ankara.

On 20 July, a total of 20 Turkish military aircraft (nine NF-5, five F-16, five F-4 and one C-130) entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, as follows:

(a) Nine NF-5 aircraft flying in two formations, violated the national airspace of the Republic of Cyprus, flying over the areas of Kyrenia and Karpasia, before landing at the illegal airport of Lefkoniko in the occupied area of the Republic. Seven of them took off and performed manoeuvres over the sea area of Kyrenia, before landing once again at the illegal airport of Lefkoniko. The aircraft returned to the FIR of Ankara only the next day (21 July) when they took off from the airport of Lefkoniko, violating once again the national airspace of Cyprus, flying in two formations over the areas of Kyrenia, Mesaoria and Karpasia;

(b) Five F-16 and five F-4 aircraft violated the national airspace of the Republic of Cyprus flying over the areas of Kyrenia, Mesaoria, Karpasia and Famagusta as part of a military march organized by the Turkish occupation army in the area of Kionelli. The aircraft returned on the same day to the FIR of Ankara;

(c) The C-130 violated the national airspace of the Republic of Cyprus flying over the area of Karpasia, before landing at the illegal airport of Lefkoniko in the occupied area of the Republic. The aircraft returned to the FIR of Ankara on the next day.

On 21 July, one C-130 aircraft violated the national airspace of the Republic of Cyprus, flying over the area of Karpasia, before landing at the illegal airport of Tymbou in the occupied area of the Republic. The aircraft returned to the FIR of Ankara on the same day.

On 22 July, one C-130 Turkish military aircraft entered the Nicosia FIR, violating international air traffic regulations and the national airspace of the Republic of Cyprus, flying over the area of Mesaoria, before landing at the illegal airport of Lefkoniko in the occupied area of the Republic. The aircraft returned to the FIR of Ankara on the same day.

On 23 July, four F-16 Turkish military aircraft flying in one formation and coming from a westerly direction entered the Nicosia FIR, violating international air traffic regulations, before exiting towards the FIR of Ankara.

On behalf of the Government of the Republic of Cyprus, I strongly protest all the above-mentioned massive violations of the Nicosia FIR and the national airspace of the Republic of Cyprus, which run contrary to international law as well as the Security Council resolutions on Cyprus, and call for their immediate cessation. I would like to note that these violations are occurring despite the fact that direct talks are being held in Cyprus at Your Excellency's invitation in the exercise of your mission of good offices. I would also like to recall that the Security Council has given its full support to this mission of good offices, conducted pursuant to Security Council resolution 1250 (1999) and noted in its recent statement of 9 July 2002, that the Turkish Cypriot side had been less constructive in its approach (see press release SC/7444), has strongly underscored the need for the Turkish side in particular to change its negative stance. I sincerely hope that the Government of Turkey will show restraint, cease the violation of the airspace of Cyprus and heed

the call of the international community by contributing to the efforts to find a just and viable solution to the Cyprus problem on the basis of United Nations resolutions.

I shall be grateful if you would have the present letter circulated as a document of the General Assembly, under agenda item 62, and of the Security Council.

(*Signed*) Sotirios **Zackheos**
Ambassador
Permanent Representative

United Nations S/2002/968

Security Council

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Letter dated 28 August 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from the United Nations Interim Administration Mission in Kosovo (UNMIK) (annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-57599 (E) 130902

Annex

Letter dated 21 August 2002 from the Under-Secretary-General for Peacekeeping Operations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I wish to refer to your letter of 27 May 2002 addressed to the Secretary-General regarding the steps that the United Nations Interim Administration Mission in Kosovo (UNMIK) has taken, or proposes to take, within its mandate under Security Council resolution 1244 (1999), to combat terrorism, in light of the relevant provisions of resolution 1373 (2001).

UNMIK has introduced a comprehensive range of legislative mechanisms in relation to terrorist activities. These include Regulation No. 2000/4 on prohibiting the incitement to hatred; Regulation No. 2001/7 on regulating the possession of weapons; Regulation No. 2001/10 on prohibiting unauthorized border/boundary crossings; Regulation No. 2001/12 on prohibiting terrorism and related offences; Regulation No. 2001/22 on measures against organized crime; Regulation No. 2001/20 on the protection of injured parties and witnesses; and Regulation No. 2002/6 on covert and technical measures of surveillance and investigation.

Other legislative mechanisms are under preparation. A draft regulation on money-laundering is close to completion. A provisional criminal code and provisional criminal procedure code are in an advanced stage of preparation. All these regulations are essential both to facilitate effective counter-terrorist operations and to maintain the rule of law in Kosovo.

UNMIK has further created the Central Intelligence Unit (CIU) within the UNMIK Police, which is composed of 40 specialized intelligence officers. Closely linked to this is the Kosovo Organized Crime Bureau (KOCB), which is now building up its capacity. The KOCB will use the intelligence generated by CIU to gather evidence for prosecution.

In addition, a Sensitive Information and Operations Unit is operating within the Department of Justice. This unit provides input for the prosecution of organized crime, terrorism and cross-border insurgency. It will also support organized crime-related operations undertaken by the international security force and the UNMIK Police, process sensitive or classified information for use in prosecutions and provide expertise and support on organized crime and terrorism to the UNMIK Police, international prosecutors and judges. In order to target the funding of organized crime and terrorism, a Financial Inspection Unit is being created to fight corruption.

UNMIK recognizes that an effective counter-terrorist strategy requires a regional approach. To this end, the Head of the Pillar for Police and Justice has negotiated a memorandum of understanding on cross-border/boundary police cooperation with Serbia and is negotiating similar memorandums with Albania, Montenegro and the former Yugoslav Republic of Macedonia. Concurrently, efforts are ongoing to obtain a computerized border control system for Kosovo to monitor movements of persons and goods, as well as to provide tighter border and boundary controls.

UNMIK has initiated a public information campaign that runs parallel to the introduction of these initiatives. The campaign focuses on explaining the rationale and implications behind the new regulations and seeks to reduce public support for those involved in extremist activity. It has, and is, being run on a broad front, focusing on support for the rule of law and on the endorsement of the Mission's message by influential members of the community and key political actors.

(*Signed*) Jean-Marie **Guéhenno**
Under-Secretary-General for
Peacekeeping Operations

United Nations S/2002/969

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Letter dated 29 August 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/376).

The Counter-Terrorism Committee has received the attached supplementary report from Austria, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

02-57616 (E) 170902

Annex

Note verbale dated 2 August 2002 from the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Austria to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1373 (2001) and has the honour to transmit herewith Austria's supplementary report on the implementation of Security Council resolution 1373 (2001) (see enclosure).

Enclosure

Additional information by Austria to the Committee established under article 6 of resolution 1373 (2001) adopted by the Security Council at its 4385th meeting on 28 September 2001

In its letter dated 22 March 2002 the Chairman of the Counter-Terrorism Committee established under article 6 of United Nations Security Council Resolution 1373 (2001) asked Austria to submit some further information on the steps taken to implement the Resolution. In addition to the clarifications already given by the Austrian representative at the Subcommittee Meeting on 12 February 2002, Austria is pleased to provide the CTC with the following additional information.*

Initial observation:

UNSC resolution 1373 (2001) in operative paragraph 3 (d) calls upon all States to become parties to the relevant conventions and protocols relating to terrorism and explicitly mentions the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999. Austria has deposited its instrument of ratification to this important legal instrument in the fight against terrorism on 15 April 2002.

Sub-paragraph 1 (a):

The report makes clear that Austria has no provisions criminalising terrorist acts as such in its current law. Does Austria intend to introduce a specific law or make amendments to existing laws so as to criminalise terrorism?

Austrian legislation provides for the criminalisation of acts covered by relevant international treaties on terrorism as general offence irrespective of whether they have been committed with terrorist motivation or without (for instance murder, hijacking, endangering by explosives and other activities).

A Government bill to broaden the scope of the Penal Code is currently being discussed in the Austrian Parliament. This bill includes crimes such as financing of terrorism (as set out in the International Convention for the Suppression of the Financing of Terrorism) and terrorist group (as defined in the EU Draft Framework Decision on Combating Terrorism). A general qualification entitled "terrorist crimes" will make existing penalties for certain offences more severe in the circumstances foreseen by the EU Draft Framework Decision on Combating Terrorism. The bill should enter into force on 1 October 2002.

Are natural or legal persons other than banks (e.g. attorneys, notaries and other intermediaries) required to report suspicious transactions to the public authorities, and if so, what penalties apply to persons who omit to report either wilfully or by negligence?

This issue has been addressed by an amendment of the EU-Money-laundering Directive. EU-Member States are obliged to implement the EU Directive by summer 2003. Preparations to

* The annexes are on file with the Secretariat and are available for consultation.

implement on the national level all obligations of this directive have already been initiated but proposals have not yet been finalised.

Sub-paragraph 1 (b):

Please outline how existing legal provisions meet the requirement of this sub-paragraph to criminalise the collection of funds for terrorist acts.

Under certain circumstances, the intentional financing of a specific terrorist act would be considered as an act of assistance (participation) to the terrorist act itself (Section 12 of the Penal Code in relation with the offence committed, e.g. murder, intentional endangering by explosives, etc.). However, the terrorist act in question would at least have to be attempted in order to make the act of the (financing) participant punishable (Section 15 para. 1 und 2 of the Penal Code). Section 279 of the Penal Code relates to the financing of armed associations. Under certain circumstances, the providing or collecting of money in order to finance the activities of a criminal organisation as defined in Section 278a of the Penal Code would be considered as participation in the criminal organisation as such. In this case, it is not necessary that a specific terrorist act has already been committed or attempted. Certain acts of handling assets that belong to a criminal organisation as defined in Section 278a of the Penal Code, if they are used or destined for financing terrorist acts could fall under Section 278a para 2 of the Penal Code when committed with the knowledge that the assets belong to a criminal organisation.

One of the intentions of the bill to amend the penal law mentioned under sub-paragraph 1 (a) above is to assure that the collection of funds for terrorist acts is criminalised also in cases that would not be covered by the current legislation. Thus, a new criminal offence called "Financing of Terrorism" will be introduced to the penal code (Section 278d).

Sub-paragraph 1 (c):

Does Austria have an autonomous legal power to freeze funds apparently intended for terrorist purposes that is not dependent on the specification of a particular State and is exercisable in situations not covered by the relevant EU regulations?

According to Section 33a of the Foreign Exchange Act, the Oesterreichische Nationalbank is - in case of the existence of certain conditions, such as the compliance with international legal obligations or the protection of external interests of the Republic of Austria - explicitly entitled to set-up special restrictions on capital movement ("measures of de-liberalisation") - e.g. the freezing of funds - in form of official announcements. These official announcements are legally regarded - implementing regulations. However, in doing so, any directly applicable legal provisions of the European Union in this context must not be violated.

Can the requirements of this sub-paragraph to freeze funds, assets and economic resources be effected under the Banking Act, the Foreign Exchange Act and the Penal Code, if the funds etc are not proceeds of crime and do not belong to a criminal organisation?

See the information given above on the official announcements or implementing regulations of the Oesterreichische Nationalbank. For both, the enactment and the cancellation of the official

announcements, a previous consent by the Federal Government is obligatory. In case of imminent danger, the consent of the Federal Chancellor is sufficient. It is also possible that the Oesterreichische Nationalbank is requested by the Federal Government to enact such official announcements.

Additionally, Section 78, para. 7 of the Banking Act has to be mentioned in this context. To the extent necessary in fulfilment of decisions of the United Nations binding under public international law, the Federal Government is - by common accord with the Executive Committee of the National Council (first chamber of the Austrian parliament) - empowered by law to prohibit by way of regulation the disposition over accounts held with credit institutions.

These accounts have to be

- the property of authorities or other state agencies of a particular state or of companies having their corporate seat in a particular state, or
- the property of companies that are governed by the above mentioned authorities, agencies or companies either financially or by way of organisation, or otherwise economically controlled by these companies.

In addition, Section 144a of the Code of Criminal Procedure provides for the freezing of funds only with respect to proceeds suspected of having been obtained through the commitment of a criminal offence or assets within the disposition of criminal organisation as defined in Section 278a of the Penal Code. However, the bill mentioned under sub-paragraph 1 (a) above will amend the Code of Criminal Procedure to provide for the freezing of assets within the disposition of a terrorist group as defined in a new offence (Section 278b of the Penal Code) as well as the freezing of funds collected for the financing of terrorist acts (Section 278d of the Penal Code).

Sub-paragraph 1 (d):

Please elaborate on the provisions of Section 39 of the Banking Act referring to enhanced diligence required to be applied by credit institutions. Are any penalties for non-compliance by the credit institutions included?

Non compliance of Section 39 Banking Act by the credit institution can result in an administrative procedure provided for in Section 70 para 4 Banking Act. If a credit institution violates provisions of the Banking Act (among others), supervisory measures by the Austrian Financial Market Supervisory Authority (FMA) can be taken to re-establish the lawful conditions within an appropriate period. In case of repetition it can result in the loss of the credit institution's licence.

How does the financial tracking system ensure that funds received by bodies such as charities are not diverted from their stated purposes to terrorist activities?

The Ministry of Finance is drafting further amendments to the Banking Act and the Gaming Act. This new legislation will also take fully into account the FATF-special recommendations regarding the financial sector. Money transmitters will be included into the definition of a "bank" and as such these institutions will have to apply all anti-money-laundering-requirements

(customer identification, internal control systems, reporting, etc). The over-the-counter purchase of foreign means of payment (e.g. currency, checks, travellers' letters of credit and payment orders) and over-the-counter sale of foreign currencies and of traveller checks (exchange bureau business) will be re-included in the definition of a credit institution; this means in particular licensing requirements and supervision by the Financial Markets authority (anti-money-laundering-requirements are already applicable to exchange bureaus).

Please provide further information on the progress of implementation of the amended EU money-laundering directive.

EU-Member States are obliged to implement the amended EU-Money-laundering Directive (91/308/EWG) until summer 2003. Preparations to implement all obligations of the directive have already been initiated. At present, the respective amendments to the Austrian law are being drafted by the Ministry of Economic Affairs and Labour (for merchants of high value goods and real estate brokers), the Ministry of Justice (concerning lawyers and auditors) and by the Ministry of Finance (credit and financial institutions, casinos).

What legal provisions apply to the use by persons outside Austria for the purpose of supporting terrorists acts outside Austria, of funds in Austria?

The above-mentioned amendments of the Banking Act together with the new amendments to the Penal Code on terrorist related crimes shall ensure extended control and reporting requirements on possible terrorist financing for credit and financial institutions also for cases referred to in the question above.

Sub-paragraph 2 (a):

Please explain whether recruitment in Austria to a terrorist group outside Austria is prohibited under Austrian law.

Currently, support for criminal organisations acting outside Austria is punishable in Austria, if the supportive act has been effected in Austrian territory. The recruitment of members for a criminal organisation can be considered as such a supportive act. (In the future legislation, terrorist groups will be covered explicitly).

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Austria including, in particular:
- the carrying out, within or from Austria, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and
- deceptive activities such as the recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organisations.

The Austrian law enforcement authorities attempt to prevent support in whatever form for terrorist groups or attacks by operational and tactical measures that appear most adequate in this respect, making use of all legal possibilities.

However, it cannot be entirely ruled out that in isolated cases terrorist groups also become active in Austria by skilfully concealing the true purpose of their activities (e.g. fund raising for humanitarian purposes, advertising pilgrimages to Arab countries, etc.).

Sub-paragraph 2 (b):

Austria has informed the CTC of its co-operation with intelligence services and EUROPOL. Could Austria please also indicate whether the steps it has taken extend the scope of this co-operation to other countries generally.

The bilateral, multilateral and international co-operation in the field of combating terrorism both with various law enforcement authorities and intelligence and security services, has been constantly extended and enhanced during the past years. In addition and as a consequence of the attacks of 11 September 2001 in the United States, this co-operation with other countries has been further intensified. Austria tries to use all avenues of co-operation in the best possible manner.

Sub-paragraph 2 (c):

This sub-paragraph requires countries to deny safe haven to those who support or commit terrorist acts. Please could Austria outline the safeguards in its systems that ensure compliance with this sub-paragraph.

One important safeguard is the fact that visas may be exclusively issued by Austrian Consulates abroad and not within Austria. The only exception to this rule are border visas, which are in any case granted to a very limited extent and in absolutely exceptional cases in conformity with the Schengen-Acquis. Residence permits are always granted only inside Austria.

With regard to the 21 countries as mentioned in Austria's initial report, instructions have been given to make inquiries to the central authorities in all cases.

As a first measure, each application for a visa or a residence permit is checked against the Schengen Information System (SIS), which contains the Wanted Persons Index and Wanted Persons Data of 15 European countries.

Upon receipt of such an inquiry, all national databases and Wanted Persons Indices are queried and the law enforcement authorities investigate the applicant. In addition, certain countries enter consultations with the Schengen partners.

All visas granted must be in a uniform Schengen-format. Only in case of exceptions as laid down in the Schengen Convention, visas valid for Austria only are issued, and in such cases the Schengen partners have to be notified. The Schengen partners are also notified of border visas. The information exchange is done electronically.

Sub-paragraph 2 (f):

Would the existing arrangements for mutual assistance allow Austria to extend co-operation to countries other than those mentioned in the reply to this sub-paragraph?

Under Section 3 para. 4 of the Austrian Act on Extradition and Mutual Assistance in Criminal Matters, Austria is in a position to grant assistance to any State, even in the absence of a treaty, on the basis of reciprocity. Consequently, Austria is in a position to extend co-operation to countries other than those mentioned in the original reply to sub-paragraph 2 (f) on that basis.

How long does it take on average to implement a request for judicial assistance in simple matters (e.g. a request for information) and complex ones (e.g. banking investigations, questioning)?

It takes approximately 2 months to execute a request for judicial assistance in simple matters and 3 to 6 months to execute a request in complex matters.

Sub-paragraph 2 (g):

The report refers to nationals of 21 countries and holders of travel documents issued by those countries who will be thoroughly checked upon entry. Could Austria please indicate by what criteria these countries have been selected? What legislation or procedures exist for checking documents and deciding on applications for visas and residence permits from nationals of countries other than the 21 countries referred to?

The 21 states in question were selected on the basis of a threat assessment made by the law enforcement authorities. While there is a general obligation for travel documents of these countries to send queries to the central authorities, applications by nationals of other countries (i.e. non-EU-states) are checked in accordance with the provisions and procedures laid down in the Schengen Convention.

In other words, the consulates and in case of residence permits the Austrian authorities are required to search the applicants' data against the nationa! Wanted Persons Index, as these files contain cross-references to the SIS-data.

Should the consulates have doubts with regard to the individual concerned or the reasons for travelling, they have to check with the Ministry of the Interior, even if nationals of other countries than the 21 countries are involved, to enable appropriate inquiries in Austria.

Please outline both the security measures in place to prevent the counterfeiting of ID cards and the legislation under which they have been put in place.

The legal basis for the virtually counterfeit-proof ID-cards is a Decree of the Federal Minister of the Interior which amended the 'Decree regarding Form and Contents of Passports and Passport Substitutes' (Federal Law Gazette II No. 6/2002 that has been handed over by the Austrian representative at the Subcommittee Meeting on 12 February 2002 and is again attached to this information).

Sub-paragraphs 3 (a) and (b):

Please describe any arrangements for the sharing of operational information on terrorist-related activities.

See reply under sub-paragraph 2 (b).

Sub-paragraph 3 (c):

Please provide a list of the relevant bilateral agreements to which Austria is party.

1. Mutual Legal Assistance:

Austria has concluded bilateral treaties with the following countries: Australia, Canada, Monaco, Poland, United States of America, Yugoslavia.

Furthermore, Austria has concluded additional bilateral treaties to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 with the following countries: Czech Republic, Germany, France, Liechtenstein, Hungary, Italy, Israel, Slovakia, Switzerland.

2. Extradition:

Austria has concluded bilateral treaties with the following countries: Australia, Bahamas, Canada, Monaco, United States of America, Yugoslavia.

Furthermore, Austria has concluded additional bilateral treaties to the European Convention on Extradition of 13 December 1957 with the following countries: Czech Republic, Germany, Hungary, Italy, Liechtenstein, Slovakia, Switzerland.

Sub-paragraph 3 (d):

Austria has ratified eleven of the twelve of the international conventions and protocols relating to terrorism mentioned in this sub-paragraph. As the practice of enforcing these ratified conventions differs among countries, please outline how Austria gives effect to these conventions and protocols. Are separate enactments required, or are the international instruments given effect to in existing laws?

As stated in the initial observation, Austria has deposited its instrument of ratification for International Convention for the Suppression of the Financing of Terrorism on 15 April 2002 and is thus party to all relevant international conventions and protocols relating to terrorism.

As regards the domestic enforcement, upon ratification of an international treaty, such a treaty is considered to be part of Austrian law once it has entered into force. However, it has to be examined, whether and which of its provisions are self-executing, that means directly applicable by national authorities, and if not to what extent it is necessary to enact specific enabling legislation.

As far as the provisions on extradition and mutual legal assistance contained in the international conventions and protocols relating to terrorism are concerned, no enabling legislation is called for, as Section 1 of the Austrian Act on Extradition and Mutual Assistance in Criminal Matters provides that its provisions only apply in the absence of conflicting rules of applicable international treaty law.

As far as the above mentioned conventions and protocols establish other obligations that do not already exist under Austrian law, in particular the Austrian Penal Code or the Austrian Code of Criminal Procedure, such obligations are normally given effect to by amending existing laws.

Sub-paragraph 3 (e):

Have the crimes set forth in the relevant international conventions been included as extraditable offences in the bilateral treaties to which Austria is party?

When concluding bilateral treaties, Austria in general does not favour a list system, but makes extradition subject to the penalty provided for the offence in question under the laws of the requesting and the requested State (at least or more than a year). Consequently, the crimes set forth in the relevant international conventions are considered as extraditable offences.

Sub-paragraph 3 (g):

Could Austria please make clear whether requests for extradition of alleged terrorists can be refused on political grounds.

In so far as applicable international conventions have abolished the political offence exception (e.g. Article 1 of the European Convention on the Suppression of Terrorism of 27 January 1977; Article 11 of the International Convention for the Suppression of Terrorist Bombings of 15 December 1997 and Article 14 of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999), requests for extradition can not be refused for political grounds.

In the absence of a bilateral or multilateral treaty, Section 14 of the Austrian Act on Extradition and Mutual Assistance in Criminal Matters applies. Under that provision, requests for extradition can be refused for political grounds, unless the criminal character of the act prevails over the political one. However, as far as terrorist acts are concerned, it is submitted that the criminal character of the act will always prevail over the political one.

Paragraph 4:

Has Austria addressed any of the concerns expressed in paragraph 4 of the Resolution relating to money-laundering and narcotics?

In addition to what has already been said in the first report, Austria inter alias also pursues its commitment to support the work of ODCCP through voluntary financial contributions. ODCCP is a world leader in the multidisciplinary combat against crime including trafficking in narcotics, organised crime and money-laundering. Further, Austria underscores the importance of a

comprehensive approach on these types of crime in pertinent current discussions like those within the ad hoc committee for the negotiation of a UN-Convention against Corruption.

Other matters:

Could Austria please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

From an organisational perspective, the authorities mentioned are all at federal level. Police and immigration control fall under the competence of the Federal Ministry of the Interior and customs, taxation and financial supervision under the Federal Ministry of Finance. In the context of this report, the following bodies working under these ministeries have to be specially mentioned: Federal Bureau of Criminal Investigation (Bundeskriminalamt) under the Federal Ministry of the Interior and Austrian Financial Market Supervisory Authority (Finanzmarktaufsicht, FMA) under the Federal Ministry of Finance. Further information on the organisation of these two ministries can be obtained from the following web sites: http://ln-inter1.bmi.gv.at and http://www.bmf.gv.at.

United Nations S/2002/970

Security Council

Distr.: General
29 August 2002

Original: English

Letter dated 29 August 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 5 August 2002 (S/2002/888).

The Counter-Terrorism Committee has received the attached supplementary report from Bolivia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 31 July 2002 from the Permanent Representative of Bolivia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

I have the honour to refer to your note dated 15 July 2002 transmitting, on behalf of the Counter-Terrorism Committee, additional comments and questions on the report submitted by the Government of Bolivia pursuant to paragraph 6 of Security Council resolution 1373 (2001), adopted on 28 September 2001.

In response to this request I am transmitting a report supplementing the first report submitted by Bolivia and containing the requested information (see appendix). This Permanent Mission is prepared to hold informal consultations or meetings with the expert members of the Committee in order to clarify some terms in the said document for the purposes of its translation into English.

I take this opportunity to express my sincere appreciation for the efforts of the Counter-Terrorism Committee and to reaffirm my country's willingness to continue the dialogue commenced with the Committee.

(*Signed*) Javier **Murillo de la Rocha**
Ambassador
Permanent Representative

Appendix

Report supplementing the first report submitted by the Government of Bolivia to the Security Council Committee established pursuant to resolution 1373 (2001), adopted on 28 September 2001

- **Subparagraph 1 (a)**

- **Please outline any legislative provisions and procedures that exist for monitoring suspicious financial transactions, apart from what is mentioned in the report. Are there any legal reporting obligations for financial institutions and other intermediaries (such as lawyers, notaries), that contribute to the prevention of economic and financial operations with terrorist or other criminal aims? What penalties apply to non-compliance with the legal obligations?**

The Bolivian Criminal Code, Chapter III, which deals with the "Penal and administrative regime on the legitimizing of illicit profits", states in its article 185 ter (Administrative regime on the legitimizing of illicit profits) as follows:

> "A Financial Intelligence Unit (FIU) shall be established which shall form part of the basic structure of the Office of the Banks and Financial Entities Examiner. The executive authority shall issue a supreme decree setting out its structure and functions, providing for the creation of decentralized units within the financial regulation system, and establishing its procedure, the method of transmittal and the content of declarations to be sent to it, the system of administrative infractions, and procedures for the imposition of administrative penalties.
>
> Financial entities and their directors, administrative managers or officials committing a breach of the obligations set out in the regulatory decree shall be liable to the imposition of the administrative penalties established in the legal norms which govern the financial system. The directors, administrative managers or officials responsible for reporting possible cases of legitimizing of illicit profits to the FIU shall be immune from administrative, civil and criminal liability, provided that the report complies with the rules set out in the regulatory decree.
>
> The supreme executive authority of the FIU shall hold a hearing to determine administrative liability and the Examiner shall implement the resulting penalties, subject to the legal regime established. In the determination of the appropriate penalty, the seriousness of the breach and the degree of participation and culpability of the parties liable shall be taken into account. In such cases, the regime of challenges and appeals of its decisions shall conform to legal provisions.
>
> Financial entities and their bodies may not invoke bank secrecy when FIU agents request information needed for the proper discharge of their duties. Information obtained by the FIU may be used only for the purpose of investigating the legitimizing of illicit profits."

- **Subparagraph 1 (b)**

- **Please explain how Bolivia intends to meet the requirements of this subparagraph, given that the funds used to carry out terrorist acts may not necessarily derive from crimes.**

The FIU conducts analysis and investigation of suspicious transactions reported by the financial system in order to determine their origin and relationship to the legitimizing of illicit profits derived from trafficking in controlled substances, crimes committed by civil servants in the exercise of their functions, or crimes committed by **criminal organizations**.

Chapter III of the Bolivian Criminal Code, which deals with "Crimes against public tranquillity", defines the crime of terrorism in its article 133, stating that "anyone who participates in, acts in the service of or collaborates with an armed organization existing for the purpose of committing [the said] crimes ... shall be punished by 15 to 20 years imprisonment, without prejudice to the penalty to be imposed should such crimes be committed".

- **Subparagraph 1 (c)**

- **What legal provisions and procedures exist for freezing of funds and other economic resources if the funds are used for carrying out terrorist acts, regardless of the source of the funds?**

- **Please explain whether it is possible, on the request of another country, to freeze funds and other economic resources held in Bolivian financial institutions by persons or entities not resident in Bolivia that provide support to terrorism outside Bolivia.**

Under Act No. 1488 of 13 April 1993 (Banks and Financial Entities) and Act No. 2297 of 20 December 2001 (Strengthening the System of Financial Intermediaries), the Office of the Banks and Financial Entities Examiner has a legal obligation to direct the financial system (banking and non-banking) to freeze funds and other economic resources held in Bolivian institutions, provided that a court order has been issued.

Article 19 of Supreme Decree 24771 of 31 July 1997, which establishes the Regulations of the FIU, states in its paragraph (7), referring to the functions of the Director of the FIU, that the said authority can block a transaction for 48 hours if it is determined to be a "suspicious transaction". This article is consistent with article 39 of the same decree, which is cited in the first report.

Bolivian authorities can take action on a request to freeze accounts of foreign institutions or individuals not residing in Bolivia if such a request is made in a letter rogatory or commission rogatory, by a competent authority, through the conclusion of an international treaty or by invoking judicial cooperation and reciprocity.

- **Subparagraph 1 (d)**

- **Is there any intention to change Bolivian legislation in order to meet the requirements of this subparagraph?**

- **What laws and practical controls and surveillance measures exist to ensure that funds and other economic resources collected for religious,**

charitable or cultural purposes are not diverted for other purposes, particularly for financing terrorism?

- **Is there any law regulating alternative money transfer agencies?**

Yes. The ratification by Bolivia in November and December 2001 of 10 international treaties on combating terrorism, and the signing of the Inter-American Convention against Terrorism within the framework of the XXXIII Regular Session of the Organization of American States (OAS) General Assembly, held in Barbados from 2 to 4 June 2002, constitute specific examples of the Bolivian Government's political will to combat terrorism in all its forms and manifestations and its decision to expand and harmonize its domestic legislation in accordance with the commitments made.

The FIU has regulated the functioning of the financial system through directives and guidelines which require that sector to report transactions identified as suspicious, pursuant to preventive measures concerning the legitimizing of illicit profits.

In accordance with Ministerial Decision No. 143/91 and the Framework Agreement on Basic Coöperation signed between the Government of Bolivia and the respective non-governmental organization, the destination of the funds is monitored by requiring an annual report, which is transmitted both to the Single National Register of Non-Governmental Organizations and to the Ministry of Finance.

Religious, charitable or cultural associations must also submit a complete annual report of activities, including a financial summary, in accordance with Supreme Decision 219172 (Regulation of Worship) of 21 July 2000.

It should be noted that Act No. 843 on tax reform, amended by Supreme Decree 24602 of 6 May 1997, grants tax exemptions to non-profit associations upon application to the National Tax Service by the entity concerned, which must submit an annual financial statement.

Non-profit associations include the following: foundations and religious, charitable, benevolent, social welfare, educational, cultural, scientific, artistic and literary, sports, political, professional or trade-union associations (provided that their statute expressly states this as their purpose).

The National Tax Service is empowered to hold any hearings which it may consider appropriate.

The annual financial statement of non-profit associations must be transmitted to the National Tax Service in accordance with the provisions of Supreme Decision 219172 of 21 July 2000.

With regard to alternative money transfer agencies, the international standards and recommendations to counter the use of such enterprises for money laundering purposes are contained in point 4 of the annex to recommendation 9 of the 40 recommendations of the Financial Action Task Force (FATF).

Since enterprises which offer fast correspondence, remittance and money transfer services could be used for the purpose of legitimizing illicit profits, the FIU prepared a study, the findings of which were embodied in a recommendation to the Office of the Banks and Financial Entities Examiner so that the aforesaid enterprises may be regulated and audited, or penalized, where appropriate.

- **Subparagraph 2 (a)**

- **Please explain whether any specific provisions apply to recruitment to terrorist groups operating inside or outside Bolivia.**

Not applicable.

- **Please provide a progress report and an outline of the draft legislation on weapons, munitions, explosives and dual-use chemical agents. Does that draft include provisions on the acquisition and possession of weapons within Bolivia or does another law deal with that?**

The Draft Act on Arms is under consideration by the Defence Committee of the National Congress. A summary of the draft is attached to this report.

- **Subparagraph 2 (b)**

- **Please provide information on the mechanism for inter-agency coordination between the authorities responsible for narcotics control, financial tracking and security, and with particular regard to the border controls preventing the movement of terrorists.**

The national intelligence community has thus far held four periodic meetings. Special meetings are convened at the request of any security agency which is a member of the intelligence community. At the meetings, current issues are discussed, taking into account political, economic, psychosocial and military factors. Recommendations are drawn up on the basis of the conclusions reached and advice is provided to the Chief Command.

The Second Department of the Chief Command of the Armed Forces is a member of the South American Congress on Military Strategic Intelligence. Since 1998, five annual congresses on military strategic intelligence have been held in Bogotá, Colombia; Montevideo, Uruguay; Viña del Mar, Chile; Córdoba, Argentina; and Santa Cruz, Bolivia, respectively. The fifth congress dealt exclusively with the topic "Effects and consequences of international terrorism in the regional and national setting".

Cooperation, consisting of exchanges of information and intelligence, is the principal aim of these congresses, taking into account the role of the armed forces in carrying out activities to combat threats and risks posed to States in the region.

Bolivia does not have a permanent counter-terrorist intelligence mechanism.

On 28 June 2002, an inter-agency cooperation agreement was signed by the Office of the Attorney-General of the Nation, the National Police, the Special Anti-Narcotics Force and the FIU, aimed at, inter alia, coordinating the processing of information on suspicious financial transactions for legitimizing illicit profits, as defined in the Criminal Code, and providing support and mutual assistance in the preparation of training programmes on intelligence and financial investigation.

The agreement provides that all information shared between the parties shall be strictly confidential, barring a substantiated court order issued by a competent authority within the framework of a formal proceeding.

- **Subparagraph 2 (d)**

- **Does Bolivia intend to introduce or amend legislation in order to meet the requirements of this subparagraph?**

We consider that the general principle laid down in article 1 of the Bolivian Criminal Code (National Territory) is applicable; it states: "This Code shall apply to:

1. Crimes committed in Bolivian territory or in localities under its jurisdiction;
2. Crimes committed abroad which have produced or were intended to produce results in Bolivian territory or in localities under its jurisdiction;
3. Crimes committed abroad by a Bolivian, provided that he or she is in the national territory and has not been punished in the locality where the crime was committed;
4. Crimes committed abroad against State security, public confidence and the national economy. This provision extends to aliens if they have been extradited or are found in Bolivian territory;
5. Crimes committed on board Bolivian vessels, aircraft or other means of transportation in a foreign country, if they have not been prosecuted in that country;
6. Crimes committed abroad by Bolivian civil servants in the performance of their duties;
7. Crimes that Bolivia is required by treaty or convention to punish, even if they were not committed in its territory."

In the case of a crime committed by a person habitually resident in Bolivia, the aforesaid article does not apply; he or she must be tried in the locality where the crime was committed.

- **Subparagraph 2 (e)**

- **What is the competence of the courts of Bolivia to deal with criminal acts of each of the following kinds:**
  - **an act committed outside Bolivia by a person who is a citizen of, or habitually resident in, Bolivia (whether that person is currently present in Bolivia or not);**
  - **an act committed outside Bolivia by a foreign national who is currently in Bolivia?**
- **Does Bolivia intend to introduce any amendments to its current legislation in order to establish terrorist acts as serious criminal offences and to ensure that the punishment imposed reflects the seriousness of such terrorist acts?**

With regard to the first part of the question, kindly refer to subparagraph 2 (d).

The Republic of Bolivia will, consistent with its foreign policy in the fight against terrorism, fulfil the commitments made under the international treaties to

which it is a party by harmonizing and incorporating into its domestic legislation, in a second phase, the new provisions contained in the anti-terrorism treaties.

- **Subparagraph 2 (f)**
- **Please outline the relevant provisions of current national legislation, referred to in the report in reply to this subparagraph.**
- **What is the legal time frame within which a request for judicial assistance in criminal investigations or proceedings relating to the financing of or other support for terrorist acts must be met and how long, on average, does it actually take in practice to implement such a request in Bolivia?**

Title VI (International judicial and administrative cooperation), Chapter I (General provisions on cooperation) of the new Code of Criminal Procedure provides as follows:

"**Article 138 (Cooperation).** The greatest possible assistance shall be afforded in response to requests from foreign authorities, provided that such requests are effected in accordance with the provisions of the Political Constitution, international treaties in force and the provisions of the present Code.

Requests for cooperation shall be submitted to the Ministry of Foreign Affairs and Worship, which shall bring them to the attention of the competent authority.

Article 139 (Requirements). Requests for assistance shall comprise:

(1) The identity of the requesting authority;

(2) The purpose of the request and a brief description of the assistance requested;

(3) A description of the act under investigation, its legal definition and the official text of the relevant law;

(4) An indication of the time required for compliance; and

(5) Any other information necessary for appropriate compliance with the request. The request and the documents submitted shall be translated into Spanish.

The judge may request additional information.

Article 140 (Refusal or suspension of assistance). Assistance shall be refused if:

(1) The request infringes the rights and guarantees provided for in the political Constitution, international agreements in force, this Code and Bolivian legislation in force.

(2) The request relates to acts which are the subject of investigation or prosecution in Bolivia, or final sentence has been pronounced upon the person concerned for the offence in relation to which cooperation is requested.

A judge may suspend cooperation if its immediate implementation would adversely affect an investigation or a trial under way in Bolivia. Reasons shall be given for the denial or suspension of cooperation.

Article 141 (Return of documents). The requested authority shall, upon handing over the original documentation and items requested, ask the requesting authority to return them as soon as possible, unless the lending authority waives its right to their return.

Article 142 (Attendance by the parties). Any person involved in proceedings relating to the request may participate in them in accordance with the provisions of this Code.

Article 143 (Expenses). Should the actions requested involve extraordinary expenses, the requested authority shall ask the requesting authority, before responding to the notification, to deposit funds necessary to cover such expenses.

Article 144 (Attendance by the requesting authority). If the nature and characteristics of the cooperation sought require the presence of foreign officials, the judge may authorize their participation in the requested actions.

Article 145 (Letters rogatory). Requests relating to compliance with a procedural action or notification shall be addressed to foreign judges or authorities by means of letters rogatory, which shall be transmitted in accordance with international agreements, international practice and this Code.

Judges shall convey communications through the Ministry of Foreign Affairs and Worship for transmittal through the diplomatic channel.

Urgent communications may be conveyed directly to any foreign judicial or administrative authority, in anticipation of requests or replies to requests, with notice given to the Ministry of Foreign Affairs and Worship.

Article 146 (Foreign residents). If a witness is in a foreign country, the judicial authority shall request authorization from the respective State for the witness to be interviewed by a consular representative, the public prosecutor or the judge himself, sitting in the country of residence.

The rules relating to depositions shall apply mutatis mutandis.

Article 147 (Expert opinions). The judicial authority may request the opinion of foreign experts in Bolivia or abroad, along with judicial cooperation in supervising the technical operations to be carried out in foreign countries.

The rules governing expert opinions and depositions shall apply as appropriate.

Article 148 (International investigations). If a criminal organization operating in Bolivia has international linkages, the Office of the Public Prosecutor may coordinate its investigation with other countries or international organizations. To that end, joint investigation teams may be set up.

Any investigation carried out in Bolivia shall be under the control of a Bolivian prosecutor and subject to review by Bolivian judges.

Joint investigations shall be approved by the Attorney-General of the Republic."

Chapter II (Extradition) provides as follows:

"**Article 149 (Extradition).** Extradition shall be governed by the international agreements in force and subsidiarily by the rules of the present Code or by the rules of reciprocity in the absence of other applicable provisions.

Article 150 (Validity). Extradition shall be valid for offences that under the legislation of both States carry a legal minimum sentence of two or more years and, in the case of Bolivian nationals, more than two years.

The extradition of a person to serve a sentence in the requesting State shall be valid if at least one year of the sentence remains to be served.

Article 151 (Invalidity). Extradition shall be invalid if:

(1) There is good reason to believe that extradition is being requested in order to prosecute or punish a person on grounds of his political opinions, race, sex, religion, nationality or ethnic origin, or that the person will be subjected to cruel, inhuman or degrading treatment or punishment;

(2) Final sentence has been pronounced in Bolivia for the offence giving rise to the request of extradition;

(3) Under the laws of the requested or requesting State, the offence giving rise to the extradition request is time-barred or the person sought has been amnestied or pardoned.

Article 152 (Commutation of sentence). If the offence giving rise to the extradition request carries a sentence of death or life imprisonment in the requesting State, the request may be granted only if that State undertakes to commute the sentence to a maximum of 30 years imprisonment.

Article 153 (Deferred implementation). The implementation of an extradition request shall be deferred if:

(1) The person sought is subject to Bolivian criminal jurisdiction for an offence other than that for which extradition has been requested, until the proceedings have concluded or the sentence has been carried out, except in the case provided for under article 21 (5) of this Code;

(2) The person sought is a pregnant woman or is the mother of a child under one year of age when the decision on extradition is to be implemented;

(3) The person subject to extradition is seriously ill and, in the opinion of a forensics physician, the immediate implementation of the extradition request would endanger his or her life.

When such circumstances cease to exist, extradition shall be effected immediately.

Article 154 (Powers of the competent court). In making decisions on extradition requests, the Supreme Court of Justice shall have the power to:

(1) Order the preventive detention of the person subject to extradition for a maximum of six months, provided that the existence of a conviction or judicial detention order is established;

(2) Order the provisional arrest of the person subject to extradition for a maximum of 90 days if all the documents required for the extradition request to be valid have not been submitted;

(3) Order the delivery to the requesting State of all or part of the property seized or impounded from the person subject to extradition that was used in the commission of the offence.

Article 155 (Simultaneous requests). If two or more States request the extradition of the same person, preference shall be given to the request from the State where the more serious offence was committed and, if the offences are equally serious, to the State which first requested it.

Article 156 (Extradition requests by Bolivia). Extradition requests shall be made by the trial judge or court, at the request of the prosecutor or plaintiff where a person has been formally charged with a crime, and automatically, where a person has been convicted.

Article 157 (Extradition requests by other States). Any extradition request shall be submitted to the Ministry of Foreign Affairs and Worship, together with a more precise description of the person subject to extradition, information that may help to determine his or her whereabouts and a certified copy of the legal provision defining the offence. All the required documentation shall be accompanied by an official translation into Spanish.

If the person is being held for trial, the documentation shall also be accompanied by the original or a certified copy of the judicial indictment containing the definition of the offence, and including a reference to the time and place of its commission and of the arrest warrant issued by a competent judicial authority.

If the person has been tried and convicted, the documentation shall also be accompanied by the original or a certified copy of the conviction and the certification of its enforcement, indicating, where appropriate, the sentence remaining to be served.

Article 158 (Procedure). If the extradition request is filed with the Supreme Court of Justice, the background information shall be transmitted to the Office of the Attorney-General of the Republic for review, so that it may rule on the validity or invalidity of the request within 10 days. The Supreme Court of Justice shall, within 20 days following receipt of that ruling, decide to grant or deny the extradition request.

Article 159 (Precedence). Should there be a conflict between the provisions of this Code and those contained in an extradition treaty, the latter shall take precedence."

- **Subparagraph 3 (c)**

- **Please provide a list of countries with which Bolivia has concluded bilateral treaties on cooperation in administrative and judicial matters relating to terrorism.**

Bolivia has concluded no bilateral treaties on cooperation in administrative and judicial matters relating to terrorism.

- **Subparagraph 3 (e)**

- **Please describe what measures have been taken, or are proposed to be taken, in regard to incorporating and harmonizing current legislation with the Acts which have been promulgated to give effect to the international conventions and protocols relating to terrorism.**

- **Have all the offences set forth in the international conventions and protocols relating to terrorism been included as extraditable offences in bilateral treaties to which Bolivia is a party?**

Pursuant to article 10 (e) and (f) of the Rules Supplementing Supreme Decree 24855 of 22 September 1997, the Ministry of Justice and Human Rights is responsible for promoting the systematization and updating of the national legal system in the areas of public and private law. It is also responsible for monitoring issues, progress and legal developments on the international scene so that they can be analysed, disseminated and incorporated in Bolivia.

The High-Level Working Group referred to in the first report has proposed the establishment of a committee for the implementation of treaties concerning terrorism. A recommendation to that end has been submitted to the new Government which will take office on 6 August 2002.

Bolivia has concluded no bilateral extradition treaties since 11 September 2001; however, the draft extradition treaty currently being negotiated with the Republic of Peru includes the offence of terrorism as a ground for extradition.

- **Subparagraph 3 (g)**

- **Has Bolivia concluded any bilateral or multilateral treaties on extradition?**

- **Please explain whether political motivation is recognized as a ground for refusing extradition of alleged terrorists.**

Bolivia has concluded extradition treaties with the following States: Belgium, Brazil, Chile, Ecuador, Italy, Paraguay, Spain, United Kingdom, United States of America and Venezuela; it has also concluded a treaty with MERCOSUR (the Southern Common Market).

The Montevideo Treaty (1984), the Bustamante Code (1928) and the Caracas Extradition Agreement (1911) are also in force at the multilateral level.

Bolivia has also entered into agreements with Italy and Spain relating to mutual judicial cooperation in criminal matters.

Treaties relating to the execution of criminal sentences are also in force between Bolivia and Argentina, Canada, Chile, Italy, Mexico, Paraguay, Spain and the United States of America.

- **Paragraph 4**
- **Has Bolivia addressed any of the concerns expressed in paragraph 4 of the Resolution?**
- **Please provide an organizational chart of the country's administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.**

Yes. At the multilateral level, Bolivia's opposition to all forms and manifestations of terrorism has been reaffirmed at various summits of Heads of State and Government, and at political consultation meetings within regional and subregional groups such as the Rio Group, the Andean Community and MERCOSUR; it has also been reaffirmed at the bilateral level by presidential and ministerial joint declarations.

Through such presidential and ministerial communiqués, the Government of Bolivia has, together with its counterparts in Argentina, Ecuador, Paraguay and Peru, expressed its firm condemnation of terrorism in its multiple forms and has undertaken to strengthen bilateral counter-terrorism mechanisms.

Cooperation

The CTC has noted that Bolivia will provide the CTC with a subsequent report on the assistance it required by Bolivia.

1. Initially, the Intelligence Directorate of the National Police and the Bolivian armed forces need training courses and specialized instruction for the members of the elite units responsible for combating terrorism in all its forms and manifestations.

2. The Ministry of Government, as the agency responsible for, inter alia, proposing policies and coordinating actions to protect the internal security of the State and for coordinating crime prevention activities, requires technical support in searching for and detecting explosives, along with appropriate equipment enabling it to carry out its tasks effectively in the prevention and suppression of terrorism in all its forms and manifestations.

3. The FIU requires technical assistance in relation to the provision of computer equipment and human resources training in money-laundering associated with terrorist activities and related financial offences.

4. For the incorporation into Bolivian legislation of the new international rules, the assistance of terrorism experts will be required.

La Paz, 24 July 2002

Draft Act on Arms, Ammunition, Explosives and Dual-Use Chemical Agents

Summary

1. Objective

The objective of the Act on Arms, Ammunition, Explosives and Dual-Use Chemical Agents is to: regulate the manufacture, import, export, sale, transport and use of arms, ammunition, explosives and dual-use chemical agents at the national level; set safety standards for handling them; define the requirements and procedures for acquiring or possessing them; and establish the jurisdictional scope of the Act.

2. Scope of application

The Act will apply to all legal and natural persons having a connection with the manufacture, sale, circulation, possession, bearing, transfer and use of arms, ammunition, explosives and dual-use chemical agents.

3. Regulatory agencies

With regard to monitoring the manufacture, sale and use of arms, ammunition, explosives and dual-use chemical agents, the regulatory agencies are:

(a) Ministry of Defence:

- Manufacture;
- Domestic sales;
- Foreign sales;
- Possession, bearing and use of military weapons;

(b) Ministry of Government:

- Registration and monitoring of arms and ammunition for civilian use;
- Domestic sales;
- Possession, bearing and use of National Police weapons.

4. Manufacture

Any natural or legal person engaged in the production of arms, ammunition, explosives and dual-use chemical agents will be required to submit a request to the Ministry of Defence in order to obtain an operating licence, following an assessment conducted in the light of national security and industrial needs. This also applies to any natural or legal person engaged in the non-industrial manufacture and repair of weapons.

Any person manufacturing arms or ammunition is required to mark his product, pursuant to the regulatory provisions established by this Act.

The Ministry of Defence will maintain an up-to-date national register of industrial manufacturers of arms, ammunition, explosives and dual-use chemical agents.

5. Trade

Any export or import of firearms, ammunition, explosives and dual-use chemical agents must, for reasons of security and national defence, be authorized by the Ministry of Defence on the basis of a specific ministerial decision.

The Ministry of Defence will keep a national register of imports and exports and of enterprises trading in arms, ammunition, explosives and dual-use chemical agents.

6. Arms and ammunition for military use

The armed forces will acquire arms and ammunition in accordance with their needs, following authorization by the executive authority and approval by the National Congress in accordance with the Finance Act.

The Ministry of Defence and the Armed Forces Command will keep up-to-date registers of all their stocks of arms and ammunition; this information will be available to the legal monitoring bodies.

7. Arms and ammunition for police use

The National Police will acquire arms and ammunition in accordance with its needs, following authorization by the executive authority and approval by the National Congress in accordance with the Finance Act.

The National Police General Command will be responsible for the registration and use of arms in its possession and for the stocks of ammunition for such arms. This information will be available to the legal monitoring bodies.

8. Arms and ammunition for civilian use

(a) Trade

The direct importing of arms and ammunition by natural persons is prohibited; importing must be conducted through legally constituted enterprises registered with the Ministry of Defence.

The Ministry of Government will be responsible for monitoring the inventories and stocks of authorized commercial enterprises.

(b) National Arms Register

A National Arms Register will be established within the Ministry of Government with a view to listing all arms in civilian use within the national territory, thus authorizing their acquisition, possession, bearing, use, circulation and transfer and domestic sale.

9. Explosives and dual-use chemical agents

The Ministry of Defence will, before authorizing the manufacture of explosives and accessories, conduct an assessment of the project in the light of economic considerations and industrial and national security needs, in cooperation with the Supreme Council on National Defence.

The Ministry of Defence will keep a constant check on the activities and the stocks of enterprises producing explosives and accessories in the national territory; it will keep a register of manufacturers of explosives and accessories, with details regarding production, movement, sales and stocks.

10. Special security agencies

Any legally constituted enterprise which wishes to offer private security services must obtain a specific ministerial decision approving their operations from the Ministry of Government. Security firms will also be authorized to use arms under the category of police use and must be listed in the National Arms Register.

11. Competent jurisdictional bodies

Jurisdiction and competence will be exercised by:

(a) Military courts in cases relating to the military use of arms, ammunition explosives and chemical agents;

(b) Ordinary courts in cases relating to police and civilian use of arms, ammunition, explosives and chemical agents.

12. Status of the draft Act on Arms, Ammunition, Explosives and Dual-Use Chemical Agents

The draft Act on Arms, Ammunition, Explosives and Dual-Use Chemical Agents is currently under consideration by the Defence Committee of the National Congress.